Supreme Court, U.S.
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No. 05-___

IN THE

Supreme Court of the United States

JOHN D. CROWLEY,
Petitioner,

v.

UNITED STATES OF AMERICA.
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Federal Circuit erred in its construction of the term "law enforcement officer" as it appears in the Federal Law Enforcement Pay Reform Act when, rather than apply the explicit and unambiguous definition Congress provided, it imposed requirements not contained in the statute, included a requirement specifically repealed by Congress, and ignored the implementing agency's regulations defining the term?

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John D. Crowley hereby petitions this Court for a writ of certiorari to the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The decision of the court below reversing the United States Court of Federal Claims was entered on February 17, 2005 and is reported as *Crowley v. United States*, 398 F.3d 1329 (Fed. Cir. 2005). *See* App. A at 1a. The petition for rehearing and rehearing *en banc* was denied on April 27, 2005. *See* App. B at 25a.

This case arose in the Federal Circuit on appeal of a decision of the United States Court of Federal Claims. The trial court's decisions are reported at *Hannon v. United States*, 48 Fed. Cl. 15 (2000) (App. F at 174a); *Crowley v. United States*, 53 Fed. Cl. 737 (2002) (App. E at 55a);

Crowley v. United States, 56 Fed. Cl. 291 (2003) (App. D at 40a); and *Crowley v. United States*, 57 Fed. Cl. 376 (2003) (App. C at 26a).

JURISDICTION

This case arises on petition for a writ of certiorari to the United States Court of Appeals for the Federal Circuit. The court below reversed the United States Court of Federal Claims' decision holding that petitioner was a law enforcement officer and therefore entitled to enhanced pay under the Federal Law Enforcement Pay Reform Act, 5 U.S.C. § 5305 note. This petition is filed within the time allowed by law. Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 5, United States Code, Section 5305 note provides:

> [E]ffective on the first day of the first applicable pay period beginning on or after January 1, 1992, each law enforcement officer whose post of duty is in one of the following areas shall receive an adjustment, which shall be a percentage of the officer's rate of basic pay, as follows:
>
> Area — Differential
> Boston-Lawrence-Salem, MA-NH Consolidated Metropolitan Statistical Area..... 16%
>
> . . . .
>
> Washington-Baltimore, DC-MD-VA-WV Consolidated Metropolitan Statistical Area... 4%

Title 5, United States Code, Section 8331(20) provides:

> "[L]aw enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the

United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

STATEMENT

Since 1947, Congress has provided special benefits for federal law enforcement officers.[1] While at first these benefits were limited to Special Agents of the Federal Bureau of Investigation, in 1948 Congress broadened this coverage to apply to essentially all civilian government employees "the duties of whose positions are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the United States."[2] This language remains as the core definition of "law enforcement officer" in effect today.[3] In 1990, Congress provided federal law enforcement officers with enhanced pay, including increased locality pay in certain urban areas.

Petitioner was a Diversion Investigator employed by the Drug Enforcement Administration. He and his coworkers spearheaded a major component of the government's war against drugs. Unlike their Special Agent counterparts, Diversion Investigators do not focus their investigations on illicit drugs, but instead on legal pharmaceuticals diverted into illicit channels.

The Diversion program was created in the 1970s as part of the Drug Enforcement Administration's (then the Bureau of

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[1] *See* Pub. L. No. 80-168, 61 Stat. 307 (1947), providing for early retirement for Special Agents of the Federal Bureau of investigation.

[2] 62 Stat. 1221 (1948).

[3] *See* 5 U.S.C. § 8331(20) (definition of "law enforcement officer" under the Civil Service Retirement System); 5 U.S.C. § 8401(17) (definition of "law enforcement officer" under the Federal Employees Retirement System.) The FERS definition further provides that such positions should be "sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals."

Narcotics and Dangerous Drugs) implementation of the Controlled Substances Act.[4] During the 1960s and early 1970s, diversion of legal pharmaceuticals was rampant—a Congressional committee concluded that nearly half of all the amphetamines and barbiturates manufactured in the United States were diverted into illicit channels and DEA estimated that roughly two thirds of all drug-related deaths and injuries in the country were caused by drugs diverted from the lawful market.[5] Stories about "diet pills" and tranquilizers were common media fare and the tragedy of Karen Ann Quinlan, whose coma was popularly attributed to abuse of quaaludes and alcohol, dominated the media for months.[6]

DEA tasked its Diversion Investigators with the primary responsibility for investigating the diversion of licit pharmaceuticals at the retail, or practitioner, level. Diversion Investigators investigated physicians, clinics and pharmacies for purposes of pursuing criminal prosecution. In 1975, this Court decided a diversion case, holding that a physician could be prosecuted under § 841 of the Controlled Substances Act.[7] In 1980, DEA reported that Diversion Investigators had identified 94 priority retail targets in 23 major cities resulting in 28 convictions with additional indictments outstanding. The first 20 physicians convicted were responsible for di-

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[4] *See* Pub. L. No. 91-513 (1970), 84 Stat.1242, Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

[5] *See* "Evaluation of the Diversion Control Program," U.S. Department of Justice Drug Enforcement Administration Planning and Inspection Division (May 1, 1983), *Hannon v. Department of Justice*, No. 99-3354 (Fed Cir.), Joint Appendix at 202, 211).

[6] *See e.g.*, Gilbert Cant, VALIUMANIA, *N.Y. Times Magazine* (Feb. 1, 1976); KAREN'S PRECEDENT, *Time Magazine* at 50 (Apr. 12, 1976); "In the Matter of Karen Ann Quinlin," (Warren V. Bush Productions 1977) (a made-for-television movie).

[7] *United States v. Moore*, 423 U.S. 122 (1975).

verting over 18 million dosage units of scheduled drugs.[8] Diversion investigations continue to this day.[9]

Petitioner Crowley is typical of the Diversion Investigators DEA has employed. Mr. Crowley was assigned to and spent over fifty percent of his time working on criminal investigations, investigating criminals or suspected criminals for violating the criminal laws of the United States by diverting controlled substances into illegal channels. The judge who heard the evidence concluded that Crowley satisfied the statutory standard and that "Mr. Crowley's duties consisted primarily of investigating individuals suspected or convicted of offenses against the criminal laws of the United States." App. E at 133a.

Notwithstanding these findings, the court below reversed the trial court's finding that petitioner was a "law enforcement officer" because it said that Mr. Crowley did not show that his position was hazardous and required vigor. App. A at 21a-23a. As such, the court below refused to award Mr. Crowley enhanced pay.

REASONS FOR GRANTING THE PETITION

This case presents questions of substantial public importance concerning the construction of the statutes that govern compensation for federal law enforcement officers. As the Federal Circuit has exclusive jurisdiction over claims arising under these statutes, there is no active circuit split on this issue. Nonetheless, there are thousands of federal employees

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[8] *Hannon v. Department of Justice*, No. 99-3354 (Fed Cir.), Joint Appendix at 223.

[9] Yesterday's diet pills and quaaludes have moved over for today's methamphetamine. *See, e.g.*, Kate Zernike, OFFICIALS ACROSS U.S. DESCRIBE DRUG WOES, *N.Y. Times*, July 6, 2005, at A12; Kate Zernike, A DRUG SCOURGE CREATES ITS OWN FORM OF ORPHAN, *N.Y. Times*, July 11, 2005, at A1.

in dozens of federal agencies who, by the plain terms of the statutes, qualify for law enforcement officer compensation, and hundreds of these employees have active claims for such benefits.

With its decision below, the Federal Circuit has flouted Congress's unambiguous and explicit terms, ignored the pertinent regulations of the Office of Personnel Management, and reversed the trial court's findings when it had previously held that such findings were "judgment calls" within the discretion of the trial court. Review by this Court is necessary to provide guidance on this issue of vital importance to thousands of current and future law enforcement officers and ensure that the court below gives proper respect to Congress and the administrative agency with delegated authority to implement the statutes at issue here.

1. The Federal Circuit has issued seven decisions over the past eight years seeking to apply Congress's explicit definition of the term "law enforcement officer."[10] In each of these decisions, the Court has strayed from the plain language of the statute and OPM's implementing regulations. Its most recent decisions criticize their predecessors, but refuse to disavow them. Instead, they merely formulate new and additional criteria, further obscuring the statutory standard. Review by this Court is necessary to give effect to Congress's expressed intent and resolve an issue that has perplexed the court below for years.

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[10] *Crowley v. United States*, App. A; *Koenig v. Department of Navy*, 315 F.3d 1378 (Fed. Cir. 2003); *Hall v. Department of Treasury*, 264 F.3d 1050 (Fed. Cir. 2001); *Gallagher v. Department of Treasury*, 274 F.3d 1331 (Fed. Cir. 2001); *Watson v. Department of Navy*, 262 F.3d 1292 (Fed. Cir. 2001); *Hannon v. Department of Justice*, 234 F.3d 674 (Fed. Cir. 2000); *Bingaman v. Department of Treasury*, 127 F.3d 1431 (Fed. Cir. 1997).